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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/823,073

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Michael G. Lowery

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EXAMINER

BERHANU, ETSUB D

ART UNIT

PAPER NUMBER

3768

MAIL DATE

DELIVERY MODE

11/18/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/823,073	Applicant(s) LOWERY, MICHAEL G.	
	Examiner ETSUB D. BERHANU	Art Unit 3768	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

2. Claims 1-3, 8-10 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Delonzor et al.'136 (previously cited).

Figure 1 of Delonzor et al.'136 discloses an article for applying a coupling agent to the surface of a tissue, the article comprising: a non-permeable membrane 12, a substrate layer 14 and a uniform layer of coupling agent 15, wherein the substrate layer either comprises a fibrous material or a non-fibrous material (the adhesive used to adhere the substrate layer to the backing layer is a non-fibrous material) and the coupling agent comprises mineral oil (see ABSTRACT, description of Figure 1 and col. 3, lines 40-46). Figure 5 discloses an embodiment wherein the coupling agent layer is on at least one major surface of the backing.

Claim Rejections - 35 USC § 103

3. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Delonzor et al.'136.

Delonzor et al.'136 discloses all the elements of the current invention, as discussed in paragraph 2 above, except for the size of the layer of coupling agent and the size of the backing. Regarding claims 4-7, as the Applicant has failed to provide criticality or unexpected results for the values of sizes recited in claims 4-7, it would have been within the skill of the art, through due experimentation, to realize an optimum thickness for the coupling agent layer and an optimum area of the backing, in order to provide the most accurate results.

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4. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Messerschmidt'951 (USPN 5,823,951 – cited by Applicant) further in view of Follis'279 (USPN 6,045,279).

Messerschmidt'951 discloses a method for analyzing glucose (col. 1, lines 11-13), the method comprising: applying a coupling agent to a tissue, bringing an optical measuring device in contact with the coupling agent and tissue and performing a non-invasive determination of glucose in the tissue through localized reflectance measurements (col. 11, line 47 – col. 12, line 18). Messerschmidt'951 discloses all the elements of the current invention, as discussed above, except for the method in which the coupling agent is applied to the tissue. Follis'279 teaches the use of an article to uniformly apply a fluid substance to a tissue site. Figure 1 of Follis'279 discloses an article 10, while Figure 2 of Follis'279 discloses that the article comprises a backing layer 46 with a uniform fluid substance layer 16 over the backing layer. The article is placed in contact with the tissue and when the article is removed from the tissue, a uniform layer of the fluid substance is useably transferred to the surface of the tissue (col. 3, line 39 – col. 4, line 37). It would have been within the skill of the art to implement the article and method of Follis'279 with the method of Messerschmidt'951 since Messerschmidt'951 requires a fluid coupling agent to be applied to the tissue, but fails to disclose details of how the coupling agent is applied to the tissue, and Follis'279 provides details of a means and method of applying a fluid substance to a tissue that is capable of being used in the method of Messerschmidt'951.

Response to Arguments

5. With regard to the rejection of claims 1-3 and 8-10 in view of Delonzor, Applicant's arguments filed 11 August 2009 have been fully considered but they are not persuasive. Applicant argues that the gel layer of Delonzor is not useably transferable to the tissue site when the optical sensor of Delonzor is removed. Applicant also argues that the gel layer of Delonzor is not uniform because it contains holes. Examiner notes that the gel layer of Delonzor is in fact transferable to the tissue site when the optical

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sensor is removed. Delonzor states that when the mineral oil based gel is used, the gel is capable of conditioning the skin (col. 6, lines 66-67), which means that part of the mineral oil based gel must have transferred to the skin. Even after removal of the optical based sensor, the transferred mineral oil based gel is usable by the skin to condition the skin. Regarding Applicant's argument that the gel layer of Delonzor is not uniform because it contains holes, Examiner notes that Figure 5 of Delonzor discloses an embodiment where the entire gel layer is uniform. Furthermore, the gel layer of Delonzor is uniform in that it possesses a uniform thickness throughout the entire gel layer. For these reasons, the rejection of claims 1-3 and 8-10 in view of Delonzor are maintained, as well as the obviousness rejections of claims 4-7 in view of Delonzor.

6. With regard to the rejection of claims 11-13 in view of Delonzor, the Applicant's arguments are persuasive and the rejection has been withdrawn. However, a new rejection of claims 11-13 has been made in light of Messerschmidt and Follis.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Atkinson et al.'471 (USPN 5,409,471) discloses a method of applying a lubricating substance to a medical coupling site wherein the lubricating substance is incorporated onto a medical pad and applied to the medical coupling site with the medical pad.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH

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shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ETSUB D. BERHANU whose telephone number is (571)272-6563. The examiner can normally be reached on Monday - Friday (7:00 - 3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on (571)272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric F Winakur/
Primary Examiner, Art Unit 3768